CHILDREN ACT

CHAPTER 46:01

Act
12 of 2012

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Note on Subsidiary Legislation

This Chapter contains no subsidiary legislation.

Note on Commencement

At the time of the revision of this Act in September 2016, sections 60(3) and (4), 64, 70, 72 and 73 were awaiting proclamation.

Note on Schedule 3

Schedule 3 to this Act has been omitted as all amendments made to the various pieces of legislation contained in that schedule have now been duly incorporated into the respective Acts.

CHAPTER 46:01

CHILDREN ACT

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CHAPTER 46:01

CHILDREN ACT

An Act relating to the protection of children and for matters related thereto. 12 of 2012.

*[ASSENTED TO 6TH AUGUST 2012]

WHEREAS it is enacted by section 13(1) of the Constitution that an Act of Parliament to which that section applies may expressly declare that it shall have effect even though inconsistent with sections 4 and 5 of the Constitution and, if any Act does so declare, it shall have effect accordingly: Preamble.

And whereas it is provided by section 13(2) of the Constitution that an Act of Parliament to which that section applies is one the Bill for which has been passed by both Houses of Parliament and at the final vote thereon in each House has been supported by the votes of not less than three-fifths of all members of that House:

And whereas it is necessary and expedient that the provisions of this Act shall have effect even though inconsistent with sections 4 and 5 of the Constitution:

PART I

PRELIMINARY

1. (1) This Act may be cited as the Children Act. Short title and commencement.

*(2) With the exception of sections 60(3) and (4), 64, 70, 72 and 73 this Act came into operation on 18th May 2015.

2. This Act shall have effect even though inconsistent with sections 4 and 5 of the Constitution. Act inconsistent with Constitution.

See Note on page 2.

Interpretation.

3. (1) In this Act—

"ammunition" has the meaning assigned to it under section 2 of the Firearms Act; Ch. 16:01.

"Authority" means the Children's Authority established under the Children's Authority Act; Ch. 46:10.

"bodily orifice" means anus, vagina, urethra, mouth, ear or nostril;

"child" means a person under the age of eighteen years;

"child pornography" means a photograph, film, video or other visual representation, whether or not made by electronic, mechanical, artistic or other methods, that shows, for a sexual purpose—

(a) a child engaging in explicit sexual activity or conduct;

(b) a child in a sexually explicit pose;

(c) parts of a child's body pasted to visual representations of parts of an adult's body or vice versa; or

(d) parts of a child's body which have been rendered complete by computer generated images or by other methods of visual representation,

but does not include any visual representation produced or reproduced for the purpose of education, counselling, the promotion of reproductive health or as part of a criminal investigation and prosecution or civil proceedings or in the lawful performance of a person's professional duties and functions;

"Children's Attorney" means an Attorney-at-law appointed in accordance with section 88;

"Children's Home" has the meaning assigned to it under section 2 of the Children's Community Residences, Foster Homes and Nurseries Act; Ch. 46:04.

"cohabitant" has the meaning assigned to it under section 2(1) of the Cohabitational Relationships Act; Ch. 45:55.

"Community Residence" has the meaning assigned to it under section 2 of the Children's Community Residences, Foster Homes and Nurseries Act;

"Convention" means the United Nations Convention on the Rights of the Child;

"Court" includes a Magistrate's Court;

"dangerous drug" has the meaning assigned to it under section 3(1) of the Dangerous Drugs Act; Ch. 11:25.

"family matter" means any cause, matter or legal proceeding arising out of any written or other law and connected with a matrimonial, familial or other domestic relationship;

"fit person" has the meaning assigned to it under section 3 of the Children's Authority Act; Ch. 46:10.

"firearm" has the meaning assigned to it under section 2 of the Firearms Act; Ch. 16:01.

"guardian", in relation to a child, includes any person who, in the opinion of a Court having cognisance of any case in relation to the child, has responsibility for the child;

"legal guardian", in relation to a child, means a person appointed to be his guardian by deed or will, or by order of a Court of competent jurisdiction;

"medical practitioner" means a person registered under the Medical Board Act; Ch. 29:50.

"Minister" means the Minister to whom responsibility for children is assigned;

"penetration of a child" includes—

(a) the insertion of any body part or any object into a child's bodily orifice; or

(b) the insertion of a part of a child's body into a person's bodily orifice,

and "penetrates", in relation to a child, shall be construed accordingly;

"penis" includes scrotum;

"place of safety" means a Reception Centre established under section 14 of the Children's Authority Act, a Community Residence or any place appointed by the Authority to be a place of safety for the purpose of the Act;

"public place" includes any public park, garden, wharf, jetty, street or bus terminus, and any ground or place to which the public for the time being has or is permitted to have access, whether on payment or otherwise;

"Rehabilitation Centre" has the meaning assigned to it under section 2 of the Children's Community Residences, Foster Homes and Nurseries Act; Ch. 46:04.

"responsibility" includes custody, charge, care and control;

"street" has the meaning assigned to it in the Highways Act; Ch. 48:01.

"touching", in relation to a child, includes—

(a) bringing a part of a person's body or an object into contact with a part of the child's body; or

(b) causing a part of a child's body to come into contact with a part of a person's body,

whether or not through clothing or any other material;

"vagina" includes vulva;

"video recording" means any recording on any medium from which a moving image may by any means be produced or transmitted, whether or not accompanied by a sound track; and

"visual representation" includes a photograph, film or video, whether or not it was made by electronic, mechanical or artistic means.

(2) For the purposes of this Act, penetration, touching or any other activity is sexual if—

(a) it is not done for medically recognised purposes; and

(b) a reasonable person would consider that—

(i) the person's purpose in relation to it, is, because of its nature, sexual; or

(ii) because of its nature it may be sexual and because of its circumstances or the purposes of any person in relation to it, or both, it is sexual.

PART II

PREVENTION OF CRUELTY TO CHILDREN

Prevention of cruelty to children.

4. (1) Where a person has responsibility for a child and—

(a) the person wilfully assaults, ill-treats, neglects, abandons or exposes the child or causes or procures the child to be assaulted, ill-treated, neglected, abandoned, or exposed in a manner likely to cause that child suffering or injury to his physical, mental or emotional health; or

(b) an infant under the age of three years dies whilst in bed or any other place with that person and it is proved that—

(i) the death was not caused by disease or any other medical cause; and

(ii) the person was, at the material time under the influence of drink, dangerous drugs or other substances having a similar effect and this resulted in the death of the child,

the person commits the offence of cruelty to a child.

(2) A person who commits an offence under subsection (1) is liable—

(a) on summary conviction, to a fine of five thousand dollars and to imprisonment for six years; or

(b) on conviction on indictment, to a fine of fifty thousand dollars and to imprisonment for ten years.

(3) For the purposes of subsection (1), a parent or other person who is legally liable to maintain a child, shall be deemed to have neglected him in a manner likely to cause injury to his health—

(a) if having been able to provide adequate food, clothing, medical aid or lodging for the child, he fails to so provide; or

(b) if having been unable otherwise to provide adequate food, clothing, medical aid or lodging

for the child, he failed to take reasonable steps to procure what is provided under any written law applicable to his circumstances.

(4) Where a person is charged with an offence under subsection (1), it is a defence for him to prove that, at the material time, he was unable to adequately provide for the child because he suffered from an infirmity of the mind or body.

(5) A person may be convicted of an offence under this section notwithstanding that actual suffering or injury to health, or the likelihood of such suffering or injury to health was obviated by the action of another person.

(6) Nothing in this section shall be construed as affecting the right of any parent, teacher or other person having the lawful control or charge of a child to administer reasonable punishment to such child.

(7) Reasonable punishment referred to in subsection (6), in relation to any person other than a parent or guardian, shall not include corporal punishment.

(8) Nothing in this section shall be taken as preventing proceedings from being brought against any person in respect of an offence under any written law.

PART III

OFFENCES IN RELATION TO BEGGING, RISK OF BURNING, FIREARMS AND AMMUNITION

Begging.

5. (1) A person who—

(a) causes or procures any child; or

(b) having responsibility for a child, allows that child,

to be in any street, premises, or other place for the purpose of begging, without the written approval of the Authority, commits an offence and is liable on summary conviction to a fine of three thousand dollars and to imprisonment for six months.

(2) A person commits an offence under subsection (1) whether or not the child engaged in or pretended to engage in any singing, playing, dancing, performing, offering anything for sale or otherwise.

(3) Where a person having responsibility for a child is charged with an offence under this section and it is proved that the child was in any street, premises or other place for any such purpose stated in subsection (1), the person charged is presumed to have allowed the child to be in the street, premises or other place for that purpose stated in subsection (1) unless the contrary is proved.

Exposing children to risk of burning.

6. (1) Where a person who has responsibility for a child under the age of twelve years fails to take reasonable precautions to protect the child from the risk of being burnt or scalded, and by reason thereof the child is injured or harmed, that person commits an offence and is liable on summary conviction to a fine of ten thousand dollars.

(2) Nothing in this section shall be taken as preventing proceedings from being brought against any person in respect of an offence under any written law.

Injury or death by firearm or ammunition.

7. (1) Where a person has possession of a firearm or ammunition, and fails to take reasonable precautions to guard against the risk of a child having access to the firearm or ammunition, and by reason thereof, the child has access to the firearm or ammunition and injures himself or another, that person commits an offence and is liable on summary conviction to a fine of fifty thousand dollars and to imprisonment for ten years.

(2) Where a child is killed or suffers serious or grievous bodily harm, or kills or causes serious or grievous bodily harm to another person as a consequence of the circumstances referred to in subsection (1), the person having possession of the firearm or ammunition commits an offence and is liable on conviction on indictment, to a fine of one hundred thousand dollars and to imprisonment for twenty years.

(3) Nothing in this section shall be taken as preventing proceedings from being brought against any person in respect of an offence under any written law.

Giving, selling, lending or renting of a firearm or ammunition to a child.

8. (1) A person who gives, sells, lends or rents a firearm or ammunition to a child commits an offence and is liable on summary conviction to a fine of fifty thousand dollars and to imprisonment for ten years.

(2) Where any person gives, sells, lends or rents a firearm or ammunition to a child and the child is killed or suffers serious or grievous bodily harm, or kills or causes serious or grievous bodily harm to another person with that firearm or ammunition, that person commits an offence is liable on conviction on indictment to a fine of one hundred thousand dollars and to imprisonment for twenty years.

(3) Nothing in this section shall be taken as preventing proceedings from being brought against any person in respect of an offence under any written law.

PART IV

OFFENCE OF FEMALE GENITAL MUTILATION

Offence of female genital mutilation.

9. (1) Subject to subsection (2), a person who excises, infibulates or otherwise mutilates the whole or any part of the labia majora or labia minora or clitoris of a child commits an offence and is liable—

(a) on summary conviction, to a fine of fifty thousand dollars and to imprisonment for ten years; or

(b) on conviction on indictment, to imprisonment for twenty years.

(2) A person shall not be liable under subsection (1) if—

(a) the performance of a surgical operation on a child is necessary for her physical or mental health and the operation is performed by a medical practitioner; or

(b) the surgical operation is performed on a child who is at any stage of labour, or who has just given birth, for purposes connected with the labour or birth, and the operation is performed by a medical practitioner or a person undergoing a course of training with a view to becoming such a practitioner.

(3) For the purpose of determining whether an operation is necessary for the mental health of a child, it is immaterial whether she or any other person believes that the operation is required as a matter of custom or ritual.

Offence of aiding and abetting, counselling or procuring a girl to engage in female genital mutilation.

10. A person who aids, abets, counsels or procures a girl to excise, infibulate or otherwise mutilate the whole or any part of her labia majora, labia minora or clitoris is liable on conviction on indictment to imprisonment for fifteen years.

PART V

ABUSE OF CHILDREN THROUGH PROSTITUTION

Allowing children to be in brothels.

11. A person having responsibility for a child who knowingly allows or encourages that child to reside in or to frequent a brothel, as defined in section 2 of the Sexual Offences Act, commits an offence and is liable—

(a) on summary conviction, to a fine of thirty thousand dollars and to imprisonment for five years; or

(b) on conviction on indictment, to a fine of fifty thousand dollars and to imprisonment for ten years.

Causing or encouraging the seduction, prostitution or sexual penetration of a child.

12. (1) A person having responsibility for a child who causes or encourages the seduction, prostitution or sexual penetration of that child commits an offence and is liable on conviction on indictment, to imprisonment for life.

(2) A person who—

(a) being the owner, occupier or manager of premises; or

(b) having control of premises or assisting in the management or control of premises,

permits a child to resort to or to be in or upon the premises for the purpose of causing or encouraging the seduction, prostitution or sexual penetration of that child commits an offence and is liable on conviction on indictment, for ten years.

(3) Where the child referred to in subsection (1) has been seduced, becomes a prostitute or has been sexually penetrated, the person having responsibility for that child shall be deemed to have caused or encouraged it, if he knowingly allowed the child to consort with, or to enter or continue in the employment of a prostitute, or person who controls prostitutes or a person of known immoral character.

(4) Where it is shown to the satisfaction of a Court, on the complaint of any person, that a child is, with the knowledge of the parent, guardian or person with responsibility for the child, exposed to the risk of seduction or prostitution or being sexually penetrated or living a life of prostitution, the Court shall bring the child to the attention of the Authority and may—

(a) order that the parent, guardian or person with responsibility for the child enter into a recognisance to exercise due care and supervision in respect of the child; or

Ch. 46:10.

(b) make a Supervision Order under the Children's Authority Act.

Ch. 4:20.

(5) The provisions of the Summary Courts Act with respect to recognisances to be of good behaviour, including the provisions as to the enforcement thereof, shall apply to recognisances under this section.

Paying for sexual services of a child.

13. (1) Where a person procures for himself or any other person the sexual services of a child and he makes or promises payment for those services to the child or a third person, or knows that another person has made or promised such payment, he commits an offence and is liable—

(a) on summary conviction, to a fine of fifty thousand dollars and to imprisonment for ten years; or

(b) on conviction on indictment, to imprisonment for twenty-five years.

(2) In this section, "payment" includes the discharge of an obligation to pay or the provision of goods or services.

(3) Notwithstanding subsection (1), where a person commits an offence under this section against a child and sexual penetration is involved, he is liable on conviction on indictment to imprisonment for life.

Causing or inciting prostitution.

14. (1) Where a person causes or incites a child to become a prostitute in Trinidad and Tobago, he commits an offence and is liable—

(a) on summary conviction, to a fine of fifty thousand dollars and to imprisonment for ten years; or

(b) on conviction on indictment, to imprisonment for twenty-five years.

(2) Where a national of Trinidad and Tobago does an act in a country outside of Trinidad and Tobago which would, if it had been done in Trinidad and Tobago, constitute an offence under this section, he is liable to the penalty prescribed under subsection (1).

Controlling a child prostitute.

15. (1) Where a person controls any of the activities of a child relating to the prostitution of the child in Trinidad and Tobago, he commits an offence and is liable—

(a) on summary conviction, to a fine of fifty thousand dollars and to imprisonment for ten years; or

(b) on conviction on indictment, to imprisonment for twenty-five years.

(2) Where a national of Trinidad and Tobago does an act in a country outside of Trinidad and Tobago which would, if it had been done in Trinidad and Tobago, constitute an offence under this section, he is liable to the penalty prescribed under subsection (1).

Arranging or facilitating child prostitution.

16. (1) Where a person arranges or facilitates the prostitution of a child in Trinidad and Tobago, he commits an offence and is liable—

(a) on summary conviction, to a fine of fifty thousand dollars or to imprisonment for ten years; or

(b) on conviction on indictment, to imprisonment for twenty-five years.

(2) Where a national of Trinidad and Tobago does an act in a country outside of Trinidad and Tobago which would, if it had been done in Trinidad and Tobago, constitute an offence under this section, he is liable to the penalty prescribed under subsection (1).

Prostitution: definition.

17. In this Part, "prostitute" means a person who, whether or not compelled to do so, offers or provides sexual services to another person in return for payment or a promise of payment to that person or a third person and "prostitution" shall be construed accordingly.

PART VI

OTHER SEXUAL OFFENCES

Sexual penetration of a child.

18. Subject to section 20, a person who sexually penetrates a child commits an offence and is liable on conviction on indictment, to imprisonment for life.

Sexual touching of a child.

19. (1) Subject to section 20, where a person touches a child and—

(a) the touching is sexual; and

(b) the child is under sixteen years of age,

the person commits an offence.

(2) A person who commits an offence under subsection (1) is liable—

(a) on summary conviction, to a fine of fifty thousand dollars and to imprisonment for ten years; or

(b) on conviction on indictment, to imprisonment for twenty years.

(3) Where a person commits an offence under subsection (1), and the touching involves the placing of any body part or of an object onto the penis or bodily orifice of a child, that person is liable on conviction on indictment to imprisonment for life.

Decriminalising of sexual activity between children.

20. (1) A person sixteen years of age or over but under twenty-one years of age is not liable under section 18 if—

(a) he is less than three years older than the child against whom he is purported to have perpetrated the offence;

(b) he is not in a familial relationship with the child nor in a position of trust in relation to the child;

(c) he is not of the same sex as the child; and

(d) the circumstances do not reveal any element of exploitation, coercion, threat, deception, grooming or manipulation in the relationship.

(2) A person fourteen years of age or over but under sixteen years of age is not liable under section 18 or 19 if—

(a) he is less than two years older than the child against whom he is purported to have perpetrated the offence;

(b) he is not in a familial relationship with the child nor in a position of trust in relation to the child;

(c) he is not of the same sex as the child; and

(d) the circumstances do not reveal any element of exploitation, coercion, threat, deception, grooming or manipulation in the relationship.

(3) A person twelve years of age or over but under fourteen years of age is not liable under section 18 or 19 if—

(a) he is less than two years older than the child against whom he is purported to have perpetrated the offence;

(b) he is not in a familial relationship with the child nor in a position of trust in relation to the child;

(c) he is not of the same sex as the child; and

(d) the circumstances do not reveal any element of exploitation, coercion, threat, deception, grooming or manipulation in the relationship.

Causing or inciting a child to engage in sexual activity.

21. (1) Where a person causes or incites a child to engage in an activity which is sexual under section 18 or 19, the person commits an offence.

(2) A person who commits an offence under subsection (1) is liable—

(a) on summary conviction, to a fine of fifty thousand dollars and to imprisonment for ten years; or

(b) on conviction on indictment, to imprisonment for twenty-five years.

(3) Where a person commits an offence under subsection (1) and the activity caused or incited involved sexual penetration of a child or sexual touching of a child with respect to the placing of any body part or of an object onto the penis or bodily orifice of a child, that person is liable, on conviction on indictment, to imprisonment for life.

Causing or inciting a child to engage in sexual activity with an animal.

22. A person who causes or incites a child to engage in sexual activity with an animal commits an offence and is liable on conviction on indictment to imprisonment for life.

Engaging in sexual activity in the presence of a child.

23. (1) Where a person engages in an activity and—

(a) the activity is sexual; and

(b) for the purposes of obtaining sexual gratification, the person engages in it—

(i) when a child is present or when a child is in a place from which the person can be observed; and

(ii) knowing or believing that the child is aware, or intending that the child should

be aware, that the person is engaging in sexual activity; and

(c) the child is under sixteen years of age,

the person commits an offence.

(2) A person who commits an offence under subsection (1) is liable—

(a) on summary conviction, to a fine of thirty thousand dollars and to imprisonment for five years; or

(b) on conviction on indictment, to a fine of fifty thousand dollars and to imprisonment for ten years.

Causing a child to watch a sexual act.

24. (1) Where a person, for the purpose of obtaining sexual gratification, causes a child to watch a third person engaging in an activity, or causes a child to look at an image of any person engaging in an activity and—

(a) the activity is sexual; and

(b) the child is under sixteen years of age,

the person commits an offence.

(2) A person who commits an offence under subsection (1) is liable—

(a) on summary conviction, to a fine of thirty thousand dollars and to imprisonment for five years; or

(b) on conviction on indictment, to a fine of fifty thousand dollars and to imprisonment for ten years.

Meeting a child following sexual grooming.

25. (1) Where a person has on at least two earlier occasions, met or communicated with a child in Trinidad and Tobago or elsewhere, by any means, including the internet, for the purpose of sexual grooming, and he meets, attempts to meet or travels for the purpose of meeting the child in Trinidad and Tobago or elsewhere with the intention of doing anything to or in respect of the child, during or after the meeting, which if done in Trinidad and Tobago would constitute the commission of an offence under Part V and this Part, the person commits an offence.

(2) A person who commits an offence under subsection (1) is liable—

(a) on summary conviction, to a fine of fifty thousand dollars and to imprisonment for ten years; or

(b) on conviction on indictment, to a fine of one hundred thousand dollars and to imprisonment for twenty years.

(3) For the purposes of this section, "sexual grooming" means gaining the trust of a child, or of a person who takes care of the child, for the purpose of sexual activity with the child.

Marriage exception with respect to section 18, 19 or 24.

26. (1) Subject to subsection (2), conduct by a person in relation to a child which would otherwise constitute an offence against a child under section 18, 19 or 24, is not an offence if, at the time of the conduct—

(a) the person and the child were lawfully married; or

(b) the person believed on reasonable grounds that he was lawfully married to the child.

(2) Subsection (1) does not apply in the case of sexual penetration per anum by a male person with a female person.

Marriage exception with respect to section 23.

27. Conduct by a person in relation to a child which would otherwise constitute an offence against a child under section 23 is not an offence if there are only two persons involved and they are or believed on reasonable grounds that they were lawfully married to each other.

Proceedings with respect to marriage exceptions.

28. In proceedings for an offence referred to in sections 26 and 27, it is for the defendant to prove that he and the child were lawfully married.

Abuse of positions of trust and familial relationships.

29. Where a person commits an offence under this Part at the time when that person is either—

(a) in a position of trust in relation to the child and knows or could reasonably be expected to know of the circumstances by virtue of which he is in a position of trust in relation to the child; or

(b) in a familial relationship with the child and knows or could reasonably be expected to know that his relation to the child is of the description falling within section 32,

that person is liable—

(c) where the offence does not involve penetration—

(i) on summary conviction, to a fine of fifty thousand dollars and to imprisonment for fifteen years; or

(ii) on conviction on indictment, to imprisonment for twenty-five years; or

(d) where the offence involves penetration, on conviction on indictment, to imprisonment for life.

Persons in position of trust.

30. For the purposes of this Part a person is in a position of trust in relation to a child if he—

(a) is eighteen years of age and over and looks after a child who is placed in an institution by virtue of a Court order or under any written law and the child is so placed in that institution;

(b) looks after a child who is resident in a Community Residence or is at an Assessment and Support Centre or a Reception Centre maintained by the Authority or is cared for in a Nursery, or Foster Home under the Children's Community Residences, Foster Care and Nurseries Act; Ch. 46:04.

(c) is an employee, independent contractor or volunteer at an institution whose main purpose is to provide services to children;

(d) looks after a child who is receiving education at an educational institution but the person is not receiving education at that institution;

(e) is appointed to be the guardian of a child;

(f) is a person who has contact with a child, by any means, in the exercise of the functions of the Authority;

(g) is a person who is to report to the Court or the Authority under this Act, the Family Proceedings Act, the Children's Authority Act or any other written law on matters relating to the welfare of the child, and has contact with the child by any means;

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(h) is a personal adviser appointed for the child under any written law;

(i) is a constable, medical practitioner, nurse, social worker, teacher, scout master, troop leader, clergyman, spiritual leader, driver, sports coach or trainer or other person in authority in whose care the child is placed;

(j) is a person who is eighteen years and over who has control over or directs a child in respect of any work done by the child;

(k) is appointed to be the guardian *ad litem* of the child;

(l) has care or control of a child while that child is in a place of safety;

(m) looks after a child on an individual basis—

(i) where the child is subject to a Foster Care Order, Care Order, Child Assessment Order, Fit Person Order or any other order of the Court which deals with the supervision of the child or supervision of the education of the child; and

(ii) in the exercise of the functions conferred by virtue of the order of an authorised person or the authority designated by order;

(n) looks after the child on an individual basis in pursuance of the requirements imposed on the child by or under any written law on his release

from placement for a criminal offence, or is subject to requirements imposed by a Court order made in criminal proceedings; or

(o) is such other person as the Minister, after consultation with the Attorney General, may by Order prescribe.

Position of trust: interpretation.

31. For the purposes of section 30 of the Act, the following provisions apply:

(a) a person "looks after a child" if he is regularly involved in caring for, training, supervising or being in charge of the child;

(b) a person "looks after a child" on an individual basis if the person—

(i) is regularly involved in caring for, training or supervising or being in charge of the child; and

(ii) in the course of his involvement, regularly has unsupervised contact with that child by any means; or

(c) a child receives education at an educational institution if—

(i) he is registered or otherwise enrolled as a pupil or student at the institution; or

(ii) he receives education at the institution under arrangements with another educational institution at which he is so registered or otherwise enrolled.

Familial relationships: interpretation.

32. (1) For the purposes of this Part, a person is within a familial relationship with a child if—

(a) the person is the child's parent, grandparent, brother, sister, half-brother, half-sister, niece, nephew, aunt, uncle, or the spouse of an aunt or uncle;

(b) the person is or has been the child's step-parent, stepbrother or stepsister;

(c) the person is or has been the child's foster parent or spouse or cohabitant of a foster parent;

(d) the person is in the process of seeking an adoption order in relation to the child who is in the care and control of the person for that purpose; and

(e) the person and the child live or have lived in the same household, or the person is or has been regularly involved in the caring for, training, supervising or being in sole charge of the child.

(2) For the purposes of subsection (1)—

(a) "aunt" means the sister or half-sister of a person's parent and "uncle" has a corresponding meaning;

(b) a person is a child's foster parent if he is the person with whom the child has been placed under the Children's Community Residences, Foster Care and Nurseries Act or pursuant to a Foster Care Order under the Children's Authority Act;

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(c) "step-parent" includes a parent's cohabitant; and

(d) "stepsister" or "stepbrother" includes the child of a parent's cohabitant.

Power of arrest.

33. A constable may take into custody, without warrant, a person who has committed, or who the constable has reason to believe has committed an offence under section 18 or 19(3).

Powers of constable with respect to child sex offenders.

33A. (1) Where a constable has reasonable cause to believe that a sexual offence has been commited by a child, the constable shall, as soon as practicable, notify—

(a) the parents, guardian or person with responsibility for the child;

(b) the Authority; and

(c) the Children's Attorney.

(2) A constable refered to in subsection (1) shall make a written report of the action taken under this section to his superior officer within seventy-two hours of the taking of such action.

Order for the welfare of child victim.

34. Notwithstanding any other order the Court may make with respect to any child who has been the victim of any offence under this Part, the Court may—

(a) order that the child be deemed in need of care and protection and referred to the Authority, which shall seek any appropriate order of the Court;

(b) order that the child be referred for counselling;

(c) order that any family members, members of the child's household or persons connected to the child be referred for counselling; or

(d) make any other order as the Court may deem fit for the welfare of the child.

PART VII

OFFENCES RELATING TO DANGEROUS DRUGS, TOBACCO AND ALCOHOL

Exposing a child to a dangerous drug.

35. A person who exposes a child or causes a child to be exposed to a dangerous drug or a substance having an effect similar to that of a dangerous drug commits an offence and is liable—

(a) on summary conviction, to a fine of five thousand dollars and to imprisonment for nine months; or

(b) on conviction on indictment to imprisonment for five years.

Giving a child a dangerous drug.

36. A person who gives, or causes to be given to a child, a dangerous drug or a substance having an effect similar to that of a dangerous drug, except upon the order of a medical practitioner, commits an offence and is liable in addition to any other penalty prescribed by law—

(a) on summary conviction, to a fine of thirty thousand dollars and to imprisonment for five years; or

(b) on conviction on indictment, to a fine of fifty thousand dollars and to imprisonment for ten years.

Use of a child to sell, buy or deliver a dangerous drug.

37. A person who uses a child or causes a child to be used as a courier, in order to sell, buy or deliver a dangerous drug or a substance having an effect similar to that of a dangerous drug commits an offence and is liable—

(a) on summary conviction, to a fine of fifty thousand dollars and to imprisonment for ten years; or

(b) on conviction on indictment, to a fine of one hundred thousand dollars and to imprisonment for twenty years.

Constable reasonably believing a child to be in possession of tobacco or drinking alcohol.

38. (1) Where a constable reasonably believes that a child or person whom he reasonably believes to be a child is—

(a) in possession of tobacco products or alcohol;

(b) smoking tobacco products; or

(c) drinking alcohol,

the constable shall—

(i) issue a warning to the child or person;

(ii) obtain the name, address and contact details of the child or person, and of the parent, guardian or person with responsibility for the child or person; and

(iii) immediately notify the Authority, who shall contact the parent, guardian or the person with responsibility for the child, forthwith on receiving the information.

(2) A person or child referred to in subsection (1) shall heed the warning of the constable and comply with the request by him for information.

(3) Subsection (1) does not apply where a person referred to therein can establish that he is an adult.

Part VII: interpretation.

39. For the purposes of this Part—

"alcohol" includes intoxicating liquor as defined under section 2 of the Liquor Licences Act; Ch. 84:10.

"cigarette" includes cut tobacco rolled up in paper, tobacco leaf or other material in such form as to be capable of immediate use for smoking;

"cigarette paper" means paper used for rolling tobacco to be used for cigarettes; and

"tobacco products" includes cigarettes, cigars, chewing tobacco, pipe tobacco or tobacco in any of its forms and cigarette paper.

PART VIII

CHILD PORNOGRAPHY

Child pornography.

40. (1) Subject to subsection (5), a person who knowingly—

(a) makes or permits to be made any child pornography or copy thereof;

(b) publishes, distributes, transmits or shows any child pornography;

(c) publishes or causes to be published any advertisement likely to be understood as conveying that the advertiser distributes or shows any child pornography;

(d) obtains access, through information and communication technologies, to child pornography;

(e) has in his possession or control any child pornography; or

(f) purchases, exchanges or otherwise receives any child pornography,

commits an offence and is liable on conviction on indictment, to a fine of thirty thousand dollars and to imprisonment for ten years.

(2) For the purposes of subsection (1), a person knowingly distributes child pornography, if he knowingly—

(a) offers; or

(b) transmits by any means including post, courier, electronic means or facsimile,

child pornography to another person.

(3) Where a person is charged with an offence under subsection (1), it is a defence for him to prove that he had not himself seen the child pornography, or did not know, or did not have any cause to suspect it to be child pornography.

(4) A person who is found in possession of child pornography is deemed to have known he was in possession of child pornography unless the contrary is proved, the burden of proof being on the accused.

(5) A person who is—

(a) a member of the Police Service established under the Police Service Act; Ch. 15:01.

(b) a member of the Prison Service established under the Prison Service Act; Ch. 13:02.

(c) a member of the Defence Force established under the Defence Act; Ch. 14:01.

(d) a member of Customs established under the Customs Act; Ch. 78:01.

(e) the Director of the Forensic Science Centre or any other officer designated by the Director of the Forensic Science Centre holding the office of Scientific Officer I or above;

(f) any other officer employed by the State in the prevention, detection, investigation, or prosecution of an offence relating to child pornography;

(g) a legal officer involved in the prosecution or defence of a case;

(h) a teacher or counsellor in the execution of his duties for the purpose of education or counselling; or

(i) any other person involved in the prosecution or defence of an offence relating to child pornography,

does not commit an offence under subsection (1), if the act which would otherwise constitute an offence under that subsection is done by him in good faith, for the purpose of his official or professional duties.

Exposing a child to pornography.

41. A person who intentionally exposes a child or causes a child to be exposed to pornography commits an offence and is liable on summary conviction to a fine of five thousand dollars and to imprisonment for nine months or upon conviction on indictment, to a fine of thirty thousand dollars and to imprisonment for five years.

Inciting or facilitating child pornography.

42. (1) A person who intentionally causes, incites, controls, arranges or facilitates a child's involvement in pornography in Trinidad and Tobago is liable on conviction on indictment, to imprisonment for twenty years.

(2) Where a national of Trinidad and Tobago does an act in a country outside of Trinidad and Tobago which would, if it had been done in Trinidad and Tobago, constitute an offence under this section, he is liable to the penalty prescribed under subsection (1).

Penalty for child offenders under Parts V, VI and VIII or the Sexual Offences Act, Ch. 11:28.

43. (1) Notwithstanding any penalty prescribed for any offence under Parts V, VI and VIII of this Act or the Sexual Offences Act, a child who is convicted of an offence under these Parts or the Sexual Offences Act is liable—

(a) if he is sixteen years of age or over—

(i) on summary conviction, to a fine of twenty thousand dollars and to imprisonment for four years; or

(ii) on conviction on indictment, to imprisonment for fifteen years;

(b) if he is under sixteen years of age–

(i) on summary conviction, to a fine of ten thousand dollars and to imprisonment for three years; or

(ii) on conviction on indictment, to imprisonment for five years.

(2) Notwithstanding subsection (1), the Court may make any order pursuant to section 59 or 60.

Compensation for virtual complainant.

44. (1) The Court or body may order a person who is convicted of an offence under this Act, to pay to the virtual complainant adequate compensation which shall be a charge on the property of the person so convicted.

(2) The order made under subsection (1) shall not deprive the virtual complainant of the right to compensation in any other Court, save that the Court that awards further compensation may take the order under this subsection into account when it makes a further award.

PART IX

PROVISIONS FOR THE SAFETY OF CHILDREN

Taking a child to a place of safety.

45. (1) Without prejudice to any power conferred upon a constable at common law or under any other written law, a constable, a person referred to in section 50(2)*(a)* or *(b)* or a person authorised by a Court may take to a place of safety, any child in respect of whom an offence under this Act or an offence mentioned in Schedule 1 has been, or there is reason to believe has been, or is likely to be committed, and shall notify—

Schedule 1.

(a) the Authority;

(b) the parent, guardian or the person with responsibility for the child;

(c) a Children's Attorney; and

(d) the police.

(2) A child who is taken to a place of safety or who seeks refuge in a place of safety may remain there—

(a) unless the Authority advises otherwise; or

(b) until he is brought before a Court.

(3) Where a child is brought before a Court, the Court may—

(a) make an order under subsection (5);

(b) cause the matter to be dealt with under the Children's Authority Act;

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(c) make a Fit Person Order directing a child to be placed in the care of a fit person; or

(d) make any other order that it deems necessary.

(4) A Court, in making an order under this section shall do so with the child's welfare as the paramount consideration, taking into account the wishes of the child where such wishes can be reasonably ascertained.

(5) Where it appears to any Court that a person has committed an offence under this Act or an offence mentioned in Schedule 1 in respect of any child, and it is in the best interest of the child that the child be brought to the attention of the Authority, the Court may, without prejudice to any other power under this Act, make such an order.

(6) Any order referred to in subsection (3) may be carried out notwithstanding that any person claims responsibility for the child.

(7) A constable or a person referred to in section 50(2)*(a)* or *(b)* shall make a written report of the action taken under this section to his superior officer within seventy-two hours of the taking of such action.

Arrangements for child by order of Court.

46. (1) Where a person having responsibility for a child has been—

(a) convicted of committing an offence under this Act or an offence mentioned in Schedule 1 in respect of that child;

(b) committed for trial for any such offence; or

(c) bound over to keep the peace towards such child,

by any Court, that Court, without requiring any new proceedings to be instituted, shall forthwith take the child out of the responsibility of the person, and bring the child to the attention of the Authority.

(2) Where at any time during any proceedings—

(a) a person having the responsibility for a child is charged with any offence in respect of that child, before any Court; or

(b) it has come to the knowledge of a Court that an offence has been committed in respect of a child,

that Court may, without requiring any new proceedings to be instituted for that purpose, bring the child to the attention of the Authority and refer the child to the Court with jurisdiction in family matters.

(3) Upon a child being brought to the attention of the Authority under this section, the Authority shall—

(a) temporarily place the child in the care of a fit relative, some other fit person or a Reception Centre licensed under the Children's Authority Act; and

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(b) immediately bring the child before a Court with jurisdiction in family matters, whereupon such Court may make such order as it deems necessary.

(4) Nothing in this section shall be construed as preventing a Court at the time when the person is so charged or at any time during the proceedings, without requiring any new proceedings to be instituted for that purpose, from bringing the child to the attention of the Authority and referring the child to the Court with jurisdiction in family matters.

(5) Every order under this section shall be in writing, and may be made by a Court in the absence of the child.

(6) Where an order is made under this section in respect of a person who has been committed for trial, and that person is acquitted of the charge, or the charge is dismissed for want of prosecution, a Court with jurisdiction in family matters may take the circumstances in respect of the acquittal or dismissal into account when considering the future care of the child.

(7) A Court, in making an order under this section shall do so with the child's welfare as the paramount consideration, taking into account the wishes of the child, and having regard to the age and maturity of the child, where such wishes can be reasonably ascertained.

Control of child placed in the care of a person.

47. (1) A person into whose care a child is placed under this Part shall, whilst the order is in force, have the like control over the child as if he were the child's parent, and shall be responsible for his welfare, and the child shall continue in the care of such person, notwithstanding that he is claimed by his parent or any other person.

(2) Where a person—

(a) knowingly assists or induces, directly or indirectly, a child to escape from the person to whose care he is committed; or

(b) knowingly harbours, conceals or prevents a child who has so escaped from returning to such person, or knowingly assists in so doing,

he is liable on summary conviction, to a fine of three thousand dollars or to imprisonment for six months.

Maintenance of child placed in the care of a person.

48. (1) Where a Court makes an order to place a child into the care of a person, the Court may also order the parent or any other person liable to maintain the child, to contribute to the child's maintenance, having regard to the means of the parent or that other person, for such period as the Court deems fit.

(2) An order under subsection (1) may be made—

(a) on the complaint or application of the person into whose care the child is placed; and

(b) at the time when the order to place the child into his care is made, or subsequently.

(3) The sums contributed by the parent or such other person liable to maintain the child pursuant to subsection (1) shall be paid to the person into whose care the child is placed and be applied for the maintenance of the child.

(4) Where, under this Part, an order to place a child into the care of a fit relative or other person is made in respect of a person who has been committed for trial for an offence, the Court has the power to make an order under this section in respect of the parent or any other person liable to maintain the child prior to the trial of the person so committed.

(5) A Court making an order for a contribution by a parent or any other person may, in the case where there is any pension or income payable to such parent or other person capable of being attached, after giving such parent or person an opportunity of being heard, order that such part of the pension or income, as the Court may see fit, be attached and be paid to the person named by the Court.

Religious persuasion of person with whom child is placed.

49. A Court in determining the person in whose care the child shall be placed under this Part, shall be satisfied that the order, if made, will be for the welfare of the child, due consideration being for this purpose given to the religious persuasion of the parties and to the wishes of the child having regard to the age and understanding of the child.

Court order to require the appearance of parent or guardian.

50. (1) Where it appears to a Court on complaint on oath of a person described in subsection (2), that a child has suffered, is suffering, or is likely to suffer such harm as to cause concern for the welfare of that child, the Court may require a parent, guardian or person with responsibility for the child to appear before it and shall notify the Authority immediately.

(2) The Court may require a parent, guardian or person with responsibility for the child to appear before it under subsection (1) where a complaint on oath is made by—

(a) a public officer experienced or qualified in social work;

(b) a person employed on contract by the Government, experienced or qualified in social work;

(c) a person who, in the opinion of the Court is acting in the interest of the child; or

(d) a constable.

(3) A Court may also act in accordance with subsection (1) in proceedings under section 45 or 46.

(4) Where, in proceedings referred to in subsection (1), the Court is satisfied that the child has suffered, is suffering or is likely to suffer such harm as to cause concern for the welfare of that child, the Court may, with the child's welfare as the

paramount consideration and taking into account the wishes of the child, having regard to the age and maturity of the child where such wishes can be reasonably ascertained, order that the child—

(a) remain in the custody of a parent, guardian or person with responsibility for the child, subject to a period of supervision by a named person or authority, and subject to such conditions as are specified in the order; or

(b) be committed to the care of a fit relative of the child or other fit person named by the Court, such fit relative or other fit person being willing and able to undertake such care.

(5) Where proceedings are before a Magistrate under subsection (1), section 45 or section 46 in respect of a child—

(a) who is a ward of the Court;

(b) in relation to whom there is in force an order of the High Court relating to custody, guardianship or access; or

(c) in relation to whom proceedings, not of a criminal nature, relating to or affecting him are before or pending in the High Court,

the Magistrate shall refer the proceedings to the High Court, whereupon those proceedings, subject to subsections (6), (7) and (8) shall be continued as if they had been properly and duly commenced in the High Court.

(6) In proceedings removed to the High Court under subsection (5), the High Court may make any order that a Magistrate may make under this Act or such other order as it sees fit.

(7) At any stage of the proceedings referred to in subsection (3) the Court may—

(a) in the case of the High Court, on its own motion;

(b) in the case of the Magistrate, by summons; or

(c) on the application of any person acting in the interest of the child,

join as a party to the proceedings any person who ought to have been joined as a party or whose presence before the Court is desirable or necessary to determine the matter.

(8) Nothing in this section precludes the Court from making an interim order, including an interim Care Order, pending the appearance of the child, parent, guardian or person with responsibility for the child.

(9) Where a complaint on oath has been made under subsection (1), and where the circumstances so require, the Court may issue a warrant authorising any constable to remove the child, with or without search, to a place of safety and place him there until he is brought before a Court with jurisdiction in family matters and the constable shall notify the Authority forthwith.

(10) A Court issuing a warrant under this section may, by the same warrant, cause any person accused of any offence in respect of the child to be apprehended and brought before a Court and cause proceedings to be taken against such person according to law.

(11) Any constable authorised by warrant under this section to search for any child, or to remove any child with or without search, may enter, if need be by force any house, building, or other place specified in the warrant, and may remove the child therefrom.

(12) Every warrant issued under this section shall be executed by a constable, who shall be accompanied by the person laying the information, if such person so desires, unless the Court by whom the warrant is issued otherwise directs.

(13) It shall not be necessary in any information or warrant under this section to name the child.

(14) For the purposes of this section, "harm" includes—

(a) neglect or abandonment;

(b) assault;

(c) ill-treatment, physical or otherwise;

(d) physical, sexual or mental abuse;

(e) domestic violence;

(f) a situation where any child is being used as a courier, seller of a dangerous drug or other

substance having an effect similar to that of a dangerous drug by those having responsibility for him or by any other person;

(g) psychological suffering from seeing or hearing the ill-treatment of another;

(h) an offence under this Act or an offence mentioned in Schedule 1; or

(i) any act or omission which impedes or may impede or is detrimental to the physical, psychological, intellectual, social, behavioural, mental or emotional development of a child.

PART X

CHILD OFFENDERS

Bail for children arrested.

51. Where a person who appears to be under the age of eighteen years is apprehended with or without warrant, and cannot be brought forthwith before a Court, the officer in charge of the Police Station to which such person is brought shall enquire into the case and may—

(a) unless the charge is for murder or any other offence which carries a term of imprisonment in excess of five years;

(b) unless it is necessary in the interest of such person to remove him from association with any reputed criminal or prostitute; or

(c) if there is reason to believe that the release of such person would defeat the ends of justice,

release such person on bail in accordance with the Bail Act, Ch. 4:60. subject to a duty to appear before a Magistrate at such time and place as the officer appoints and shall bring the child to the attention of the Authority.

Custody of children not discharged on bail after arrest.

52. Where a person who appears to be under the age of eighteen years is apprehended and is not released in accordance with section 51, the officer in charge of the Police Station to

which such person is brought shall notify the Authority forthwith and shall cause him to be placed in a Community Residence until he can be brought before a Court.

Association with adults during detention in Police Station.

53. Where a child has been detained in a Police Station, the Commissioner of Police shall make arrangements for preventing the child from associating with an adult charged with or convicted of an offence.

Remand or committal to custody in a Community Residence.

54. (1) A Court, on remanding or committing for trial a child who is not released on bail, shall order that the child be placed in the custody of a Community Residence named in the Order for the period for which he is remanded or until he is brought before the Court.

(2) An order under subsection (1) may be varied to name an alternative Community Residence.

Parent, guardian or person with responsibility for the child to attend Court proceedings.

55. (1) Where a child is charged with an offence or brought before a Court under this Act, his parent, guardian or person with responsibility for him shall be required to attend at the proceedings of the Court, unless the Court is satisfied that it would be unreasonable or impractical to require his attendance.

(2) Where a child is arrested by a constable, that officer or the officer in charge of the Police Station to which the child was brought, shall advise the parent, guardian or person with responsibility for the child to attend the Court before which the child will appear.

(3) Subsection (2) shall not apply if the parent, guardian or person with responsibility for the child cannot be found.

(4) Where a child is arrested or charged with any offence, or in proceedings referred to in section 50(1) or (2), a summons or warrant may be issued by the Court to enforce the attendance of the parent, guardian or person with responsibility for the child for the purpose of—

(a) enabling such parent, guardian or person with responsibility for the child to take part in the proceedings; and

(b) enabling orders to be made against the parent, guardian or person with responsibility for the child in the same manner as if a complaint were made upon which a summons or warrant could be issued against a defendant under the Summary Courts Act. Ch. 4:20.

(5) The parent, guardian or person with responsibility for the child required to attend Court proceedings under this section shall be the parent, guardian or person with responsibility for the child having the care and control of the child.

(6) The attendance of the parent, guardian or person with responsibility for a child in the proceedings of the Court may not be required under this section in any case where the child was, before the institution of the proceedings, removed from the custody or care and control of his parent, guardian or the person with responsibility for him by an order of a Court.

Power of Court to order parent, guardian or person with responsibility for the child to pay any fine, damages or costs instead of child where a child is charged.

56. (1) Where a child is charged with an offence, the commission of which attracts a fine, damages, or costs, and is brought before a Court, and the Court is of the opinion that the case would be best met by the imposition of a fine, damages, or costs, whether with or without any other punishment, the Court may, in any case where the offender is a child, order the parent, guardian or person with responsibility for the child to pay the fine, damages, or costs awarded unless the Court is satisfied that—

(a) the parent, guardian or person with responsibility for the child cannot be found; or

(b) the parent, guardian or person with responsibility for the child has not contributed to the commission of the offence by neglecting to exercise due care of the child.

(2) Where a child is charged with any offence, the Court may order his parent, guardian or person with responsibility for him to give security for his good behaviour.

(3) Where the Court finds that a charge against a child is proved, the Court, without proceeding to convict the child, may make—

(a) an order against the parent, guardian or person with responsibility for the child—

(i) for the payment of damages or costs; or

(ii) requiring him to give security for good behaviour;

(b) a Recognisance Order in accordance with the Children's Authority Act; or

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(c) any other order including an interim order as the Court thinks fit under section 25 of the Children's Authority Act.

(4) An order under this section may be made against a parent, guardian or person with responsibility for the child who, having been required to attend, has failed to do so, but, save as aforesaid, no such order shall be made without giving the parent, guardian or person with responsibility for the child an opportunity to be heard.

(5) Any sums, pursuant to this section, which a Court—

(a) imposes and orders to be paid by a parent, guardian or person with responsibility for the child; or

(b) on forfeiture of any such security referred to in this section,

may be recovered from the parent, guardian or person with responsibility for the child in like manner as if the order had been made on the conviction of the parent, guardian or person with responsibility for the child for the offence with which the child was charged.

Power of the Court to call parent or guardian to show cause where a child is convicted.

57. (1) Where a child is convicted of an offence and the Court is of the view that the parent, guardian or person with responsibility for the child has failed to exercise reasonable care of or supervision over the child to ensure that the child does not

commit an offence, the Court may call upon the parent, guardian or person with responsibility for the child to show cause why he should not be required to pay a fine in addition to that which is to be paid by the child or for the child by order of the Court and if the parent, guardian or person with responsibility for the child fails to show good cause, the Court may order—

(a) the parent, guardian or person with responsibility for the child to pay a fine to the Court;

(b) the parent, guardian or person with responsibility for the child to attend counselling on such terms as the Court may order; and

(c) with the consent of the parent, guardian or person with responsibility for the child, to enter into a recognisance to take proper care of the child and to exercise proper supervision over the child.

(2) In determining whether a parent, guardian or person with responsibility for a child failed to exercise reasonable care of or supervision over a child, the Court may consider any of the following factors:

(a) the age and maturity of the child;

(b) the prior conduct of the child;

(c) psychological or medical disorders, psychological, physical or learning disabilities or emotional disturbances of the child;

(d) whether the child was under the supervision of the parent, guardian or person with responsibility for the child when the child committed the offence for which he was convicted;

(e) if the child was not under the care or supervision of the parent, guardian or person with responsibility for the child when the child committed the offence, whether the parent, guardian or person with responsibility for the child made suitable arrangements for the supervision of the child;

(f) whether the parent, guardian or person with responsibility for the child has sought to improve his parenting skills by attending parenting courses or in any other manner;

(g) whether the parent, guardian or person with responsibility for the child has sought professional assistance in handling or controlling the child, when necessary;

(h) whether the parent, guardian or person with responsibility for the child has assisted or co-operated with the relevant governmental authorities in their efforts to handle or control the child, including producing the child for Court appointments and hearings;

(i) psychological or medical disorders, physical or learning disabilities or emotional disturbances of the parent, guardian or person with responsibility for the child; and

(j) any other matter that the Court considers relevant to its determination.

(3) Where a parent, guardian or person with responsibility for the child refuses to enter into a recognisance and the Court considers the refusal to be unreasonable, that person commits an offence and is liable on summary conviction to a fine of five thousand dollars.

(4) An order under subsection (1)*(c)* shall not require the parent, guardian or person with responsibility for the child to enter into a recognisance for a period exceeding three years or, where the child will attain eighteen years in a period shorter than three years, for a period not exceeding that shorter period.

(5) In determining the amount to be paid by a parent, guardian or person with responsibility for a child under subsection (1), the Court must have regard to the parent's, guardian's or person's capacity to pay the amount, including the effect that any order would have on the parent's, guardian's or person's capacity to provide for dependants.

Limitation of costs.

58. (1) Where a child is ordered by the Court to pay costs in addition to a fine, the amount of the costs so ordered to be paid shall not exceed the amount of the fine.

(2) The Court may order—

(a) all fees payable or paid by the complainant in excess of the amount of costs ordered to be paid under subsection (1) to be remitted or repaid to the complainant; and

(b) the fine or any part thereof, to be paid to the complainant to offset his costs.

Determination of sentence for child.

59. (1) Notwithstanding any other written law, in determining the sentence of any child who has been convicted of any offence, the Court may—

(a) request an investigation and report by—

(i) a probation officer or social worker;

(ii) a child psychologist, or a child psychiatrist;

(iii) a Children's Home; or

(iv) the Authority,

and take the report into account;

(b) in relation to a child, request a copy of any proceedings from the Court with jurisdiction in family matters which relate to the child and take into account those proceedings;

(c) hear and take into account submissions on behalf of the Authority;

(d) hear and take into account submissions by the Children's Attorney or any other Attorney-at-law representing the child who has been convicted; or

(e) hear and take into account submissions by the Children's Attorney or any other Attorney-at-law representing the child victim.

(2) Where a child charged with any offence is tried by any Court, and the Court is satisfied of his guilt, the Court shall

take into consideration the provisions of any written law enabling the Court to deal with the case and the Court may—

(a) dismiss the charge;

(b) discharge the offender on his entering into a recognisance;

(c) discharge the offender and place him under the supervision of a probation officer;

(d) place the offender in the care of a fit relative or other fit person;

(e) commit the offender to a Community Residence appropriate to the age of the child;

(f) order the offender to pay a fine, damages, and costs;

(g) order the parent or guardian of the offender or person with responsibility for the offener to pay a fine, damages and costs;

(h) order the parent or guardian of the offender or person with responsibility for the offender to give security for his good behaviour;

(i) make a Supervision Order as described in section 25K of the Children's Authority Act; Ch. 46:10.

(j) order that the offender be deemed in need of care and protection and referred to the Authority, which shall investigate and seek any appropriate order of the Court with jurisdiction in family matters or the Juvenile Court;

(k) make an order for counselling, any other rehabilitative intervention or treatment or for psychological evaluation and resultant assistance;

(l) make an order for community service;

(m) order that no conviction be recorded;

(n) order that the proceedings be sealed and not divulged without an order of the Court; and

(o) make any other order as the Court deems fit.

(3) Where a child is convicted of any offence and the offence is his first offence, the Court may pronounce a custodial sentence only if convinced that—

(a) the offence is so grave that no other punishment or course of action that it is authorised to impose under this Act is sufficient; and

(b) having regard to such information revealed pursuant to subsection (1), it is in the best interest of the child that he be placed in an appropriate Community Residence.

(4) If a custodial sentence is pronounced on a person who was at the time of his sentencing, a child, and the period of that sentence extends beyond the time that the person would have attained the age of eighteen years, the High Court shall, on his attaining the age of eighteen years, review the sentence and may order that—

(a) the remainder of the sentence be served in prison;

(b) the sentence be commuted to time served subject to paragraph *(d)*;

(c) the sentence be reduced and the remainder of the sentence be served in prison;

(d) the person be discharged from placement but placed on a bond for a period of time not exceeding fifteen years during which time he attends counselling, on condition that failure to attend and participate in counselling may result in the requirement that he completes the sentence in prison; or

(e) the person be placed under the supervision of a probation officer and attend counselling on condition that failure to attend upon the probation officer or to attend and participate in counselling may result in the requirement that he completes the sentence in prison.

(5) An order made under subsection (4)*(e)* may be made in addition to any order made under paragraphs *(b)* and *(c)*.

Restriction on punishment of children and substitution of custody in place of detention for imprisonment.

60. (1) A Court shall not order a child to be detained in an adult prison.

(2) Where a child—

(a) is convicted of an offence which is punishable, in the case of a person eighteen years of age or over, by imprisonment; or

(b) would be liable to be imprisoned, in the case of a person eighteen years of age or over, in default of payment of any fine, damages or costs,

the Court may—

(i) order that he be placed in a Community Residence named in the order for such term as may be specified in the order, not exceeding the term for which he may, but for this Part, be sentenced to imprisonment or committed to prison;

(ii) order that the offender be deemed in need of care and protection and referred to the Authority, who shall investigate and seek any appropriate order of the Court with jurisdiction in family matters;

(iii) order that the offender be referred for counselling or any other rehabilitative intervention or treatment;

(iv) order that any family members, members of the offender's household or persons connected to the offender be referred for counselling;

(v) order that no conviction be recorded;

(vi) order that the proceedings be sealed and not divulged without an order of the Court; or

(vii) make any other order as the Court may deem fit.

(3) Where the child offender is between the ages of ten years and under eighteen years, the Court may order that he be placed at a Rehabilitation Centre.

(4) Where the child offender is under ten years of age and is charged before a Court, the Court may order that the child be placed at a Children's Home.

(5) Where a child is detained in any facility he shall not be allowed to associate with adult prisoners except with the express permission of the Court in respect of the adult prisoner named in such order.

Inability of parent to control child.

61. Where a parent, guardian or person with responsibility for a child proves to the Court with jurisdiction in family matters that he is unable to control the child, and he desires the child to be sent to a Community Residence under this Part, the Court shall order that the child be brought to the attention of the Authority.

Additional order under the Probation of Offenders Act, Ch. 13:51.

62. Where under the provisions of this Part an order is made for the child to be brought to the attention of the Authority and for the referral of the child to the Court with jurisdiction in family matters, the Court may, in addition to such order, make an order under the Probation of Offenders Act that the child be placed under the supervision of a probation officer provided that the recognisance into which the child, if not charged with an offence is required to enter, shall bind him to appear and submit to the further order of the Court.

Conveyance to Community Residence and person conveying to have powers of a constable.

63. (1) Where a child offender is ordered to be placed at a Community Residence, the Court shall deliver him into the custody of the constable responsible for his conveyance to the Community Residence, who shall deliver him to the person in charge of the Community Residence together with the placement order or other document in pursuance of which the offender was so placed.

(2) Every person authorised by the managers of a Community Residence to take charge of any child offender ordered to be placed under this Part for the purpose of conveying him to or from the Community Residence, or of apprehending and bringing him back to the Community Residence in case of his escape or refusal to return, shall, for that purpose and while engaged in that duty, have all the powers, protection, and privileges of a constable.

Period of placement for a child between ten and under eighteen years.

64. (1) A Court may order a child offender between the ages of ten and under eighteen years be placed in a Rehabilitation Centre until the offender attains the age of eighteen years.

(2) Notwithstanding subsection (1), the Court may, on the application of the managers of the Rehabilitation Centre and with the consent of the offender, make an order extending the time of placement to the age of twenty-one years.

Period of placement for a child under the age of ten years.

65. (1) A Court may order a child offender who is under the age of ten years to be placed in a Children's Home until the offender attains the age of eighteen years.

(2) Notwithstanding subsection (1), the Court may, on the application of the managers of the Children's Home and with the consent of the offender, make an order extending the time of placement to the age of twenty-one years.

Temporary placement of child.

66. (1) Where a person who is not a foster parent as defined in section 29(3)*(c)* of the Children's Community Residences, Foster Care and Nurseries Act, wishes to care for a child who is—

(a) in the care of a Community Residence; and

(b) not related to him,

he shall apply to the manager of the Community Residence for a licence for such care.

(2) Where an application has been made under subsection (1), the manager of the Community Residence shall notify the Authority of such application and shall supply the following particulars:

(a) the name and address of the applicant;

(b) the occupation and place of work of the applicant;

(c) the marital status of the applicant;

(d) the relationship, if any, with the child;

(e) the period of intended placement;

(f) the suitability of the child for such placement; and

(g) the reason for such placement.

(3) Upon investigation by the Authority as to the suitability of such placement, the Authority may authorise the manager to permit the child to be temporarily placed out with the applicant provided that any order of the Court relating to the care of the child provides that the child may be temporarily placed out with any such applicant on the approval of the Authority.

(4) Where the child is a child offender, the managers of the Community Residence may at any time, by order in writing made with the approval of the Authority, revoke any such licence and order the child offender to return to the Community Residence.

(5) Any child offender escaping from the person with whom he is placed in pursuance of this section, or refusing to return to the Community Residence when required to do so on the revocation or forfeiture of his licence, is liable to the same penalty as if he had escaped from the Community Residence.

Licence period to be deemed part of time of placement.

67. (1) The time during which a child offender is absent from a Community Residence in pursuance of a licence under section 66 shall be deemed to be part of the time of his placement in the Community Residence.

(2) Notwithstanding subsection (1), where a child offender has failed to return to the Community Residence on the licence being forfeited or revoked, the time which elapses after his failure so to return shall be excluded in computing the time during which he is to be placed in the Community Residence.

Parent may be summoned to produce child.

68. (1) Where a licence has been revoked or forfeited and the child offender refuses or fails to return to the Community Residence, a Court, if satisfied by complaint on oath that there is reasonable ground for believing that the parent, guardian or person with responsibility for the child offender, could produce him, may issue a summons requiring the parent, guardian or person with responsibility for him to attend before it on such day as may be specified in the summons, and to produce the child offender.

(2) If a parent, guardian or person with responsibility for a child fails to produce the child in accordance with the summons referred to in subsection (1), without

reasonable cause, he is, in addition to any other liability to which he may be subject under this Part, liable on summary conviction to a fine of five thousand dollars or imprisonment not exceeding three years.

Discharge.

69. (1) The Court may at any time order a child offender to be discharged from a Community Residence, either absolutely or on such conditions as the Court approves, and may where the order of discharge is conditional, revoke the order on the breach of any of the conditions on which it was granted.

(2) Where the order is revoked under subsection (1), the child offender shall return to the Community Residence, and if he fails so to do, he and any person who knowingly harbours or conceals him or prevents him from returning to the Community Residence is liable to the same penalty as if the child offender had escaped from the Community Residence.

Transfer orders.

70. The Court may order—

(a) a child offender to be transferred from one Rehabilitation Centre to another or from one Children's Home to another;

(b) a child offender under the age of fourteen years, placed in a Rehabilitation Centre, to be transferred to a Children's Home; or

(c) a child over the age of twelve years placed in a Children's Home, who is found to be a bad influence on the other children in the Community Residence, to be transferred to a Rehabilitation Centre,

but the whole period of placement of the offender shall not be increased by the transfer, and where the Community Residence to which a child is ordered to be transferred is a Children's Home not established and managed by the Authority, the order shall have no effect unless the mangers signify their willingness to receive the child.

Transfer for medical treatment.

71. (1) The Court may order a child offender placed in a Community Residence to be transferred for medical treatment and care to a general hospital or mental hospital, upon such terms and conditions and for such period as shall seem proper.

(2) A certificate of fitness certifying that the child offender is in a fit state to be discharged from the general hospital or mental hospital and signed by the Medical Chief of Staff shall be sufficient evidence for a Court to order that the child offender be sent back to the Community Residence from which he was transferred, there to be placed until completion of his unexpired term in such Community Residence.

(3) If a child offender fails to return to the Community Residence, under this section, he and any person who knowingly harbours or conceals him or prevents him from returning to the Community Residence, is liable to the same penalty as if the child offender had escaped from the Community Residence.

Re-committal to Rehabilitation Centre.

72. (1) Where a person who has been sent to a Rehabilitation Centre, is, either while at the Rehabilitation Centre or after his discharge from the Rehabilitation Centre, convicted, whether on indictment or summarily, of an offence for which he can, or could, were he an adult, be sentenced to imprisonment without the option of a fine, and is, in the opinion of the Court before which he is charged, not more than seventeen years of age, the Court may, in addition to or in lieu of sentencing him according to law to any other punishment, order that he be re-committed to a Rehabilitation Centre for any period not less than one year nor more than five years, but not in any case, extending beyond the date on which such person will, in the opinion of the Court, attain the age of eighteen years.

(2) A person ordered to be sent to a Rehabilitation Centre shall not in addition be sentenced to imprisonment.

Transfer from prison to a Rehabilitation Centre.

73. The Court may, if it thinks fit, at any time order a person sentenced to imprisonment, who in the opinion of the Court is under the age of seventeen years to be transferred from prison to a Rehabilitation Centre and there to be placed for any period not

less than one year nor more than five years, but not in any case extending beyond the date on which such person will, in the opinion of the Court attain the age of eighteen years.

Power to send child offender to training.

74. (1) Where a child offender over the age of thirteen years has conducted himself well for at least five months, whether while placed in a Community Residence or out on licence, the managers of the Community Residence may bind such child offender, with his consent, to participate in a valid training programme for such term, in such form, and under conditions approved by the Court, notwithstanding that the period of placement of such child offender has not expired.

(2) No term of training referred to in subsection (1) shall continue for a longer period than five years or beyond the day when the child offender attains the age of twenty-one years, in the case of a child offender over fourteen years of age, and eighteen years in the case of a child offender under the age of fourteen years.

Non-application of death sentence in case of person under eighteen years of age.

75. The sentence of death shall not be pronounced on or recorded against a person convicted of an offence if it appears to the Court that at the time when the offence was committed he was under eighteen years of age.

Placement in case of certain crimes committed by children.

76. (1) Where a child is convicted on indictment of an attempt to murder, or of manslaughter, or of wounding with intent to do grievous bodily harm, and the Court is of the opinion that no punishment which, under the provisions of this Act, it is authorised to inflict is appropriate, the Court may sentence the offender to be placed in a Community Residence for such period as may be specified in the sentence, and on such conditions as the Court may direct.

(2) A child placed in a Community Residence under subsection (1) shall be deemed to be in legal custody.

Provisions as to discharge of children placed in accordance with directions of the Court.

77. (1) A child who was placed pursuant to the directions of the Court under section 76 may, at any time, be discharged by the Court on licence.

(2) A licence may be in such form and may contain such conditions as the Court may direct.

(3) A licence may at any time be revoked or varied by the Court, and, where a licence has been revoked, the child to whom the licence relates shall return to such place as the Court may direct, and if he fails to do so, may be apprehended without warrant and taken to that place.

(4) A licence means a conditional release granted by the Court on such terms and conditions as the Court deems fit.

Provisions as to csutody of children.

78. (1) An order committing a child to a Community Residence shall be sufficient authority for such placement and shall be delivered with the child to the person in charge thereof.

(2) A child whilst so placed and whilst being conveyed to and from the Community Residence shall be deemed to be in legal custody of that Community Residence.

(3) A child who escapes from legal custody referred to in subsection (2) may be apprehended without warrant and returned to the Community Residence.

Court order may provide for the guardian or parent to have access to child, etc.

79. (1) An order made by any Court pursuant to this Part or any other Part under this Act may also provide for—

(a) access to the child by a parent, legal guardian or person with responsibility for the child; and

(b) supervision and monitoring of the order in such manner as is specified in the order.

(2) Every order made pursuant to subsection (1) shall be in writing and may be made by the Court in the absence of the child.

Ministers to make Rules for Community Residences on the advice of the Authority.

80. The Minister may make Rules on the advice of the Authority pertaining to the places of placement, with respect to—

(a) the buildings or residences that may be used;

(b) the inspection of these places;

(c) the classification of children;

(d) the treatment of children;

(e) the employment of children;

(f) the control of children;

(g) the visitation procedures for children; and

(h) any other matter that may be necessary for the purposes of the Act.

Juvenile Court and its proceedings.

81. (1) A Juvenile Court—

(a) when hearing charges against children; or

(b) when hearing applications relating to a child at which the attendance of the child is required,

shall sit—

(i) in a different building;

(ii) in a different room;

(iii) on different days; or

(iv) at different times,

from those at which the ordinary sittings are held, unless the child is charged jointly with any other person not being a child.

(2) Where, in the course of any proceedings in a Juvenile Court, it appears to the Court that the person charged or to whom the proceedings relate is eighteen years of age or older, nothing in this section shall be construed as preventing the Juvenile Court, if it thinks it undesirable, to adjourn the case from proceeding with the hearing and determination of the case.

(3) A person who appears to be under eighteen years of age shall not be allowed to associate with adults charged with any offence—

(a) whilst being conveyed to or from Court; or

(b) whilst waiting before or after their attendance in Court.

(4) For the purpose of proceedings in the Juvenile Court, no persons other than—

(a) the Judges and judicial officers, officers of the Court and staff of the Court;

(b) the parties to the case and their Attorneys-at-law; and

(c) other persons directly concerned in the case,

shall, except by leave of the Court, be allowed to attend.

(5) Proceedings in any Court with respect to sexual offences involving children shall be heard *in camera* except by order of the Court.

(6) No person shall publish the name, address, photograph or Community Residence where the child is placed or anything likely to lead to the identification of the child before the Court, save with the permission of the Court or in so far as required by this Act.

(7) A person who contravenes subsection (6) is liable on summary conviction to a fine of fifty thousand dollars.

PART XI

OFFENCES IN RELATION TO COMMUNITY RESIDENCES

Refusal to conform to rules.

82. (1) Where a child offender who is placed in a Community Residence is guilty of a serious and wilful breach of the rules of the Community Residence or of inciting other inmates of the Community Residence to such a breach, he is liable on summary conviction—

(a) in the case of child in a Rehabilitation Centre, to have the period of his placement increased by such period not exceeding six months as the Court directs; or

(b) in the case of a child twelve years of age or over, and who is placed in a Children's Home, to be sent to a Rehabilitation Centre and to be there placed subject and according to the provisions of this Part.

(2) A period of placement may be increased in pursuance of this section notwithstanding that the period as so increased will extend beyond the limits imposed by this Part.

Escaping from Community Residence.

83. Where a child offender who is placed at a Community Residence escapes from the Community Residence, he may, at anytime before the expiration of his period of placement be apprehended without a warrant, and may be brought back before a Magistrate and shall be liable on conviction to be sent back to the Community Residence from which he has escaped—

(a) and, in the case of a child offender under the age of sixteen years placed at a Rehabilitation Centre—

(i) to have the period of his placement increased by such period, not exceeding six months, as the Magistrate directs; or

(ii) if the age of sixteen years or over, he shall be liable to be sent to the Rehabilitation Centre as established by the Young Offenders Detention Act, for a term of three months and at the expiration of the term, he may be required to serve the balance of the period in the Community Residence;

Ch. 13:05.

(b) or, in the case of a child twelve years of age or over in a Children's Home, to be placed at a Rehabilitation Centre and there to be placed subject to the provisions of this Part.

Period of escape not reckoned in period of placement.

84. Where a child offender has been absent from a Community Residence either because he has escaped or been imprisoned under this Part, the time he has been absent shall not be computed as part of the period of his placement and the period of his placement shall continue when he is brought back to the Community Residence.

Placement beyond limitation period.

85. Where in computing the time of placement under section 84, the period of placement extends beyond the limits imposed by this Part, the child offender shall continue his placement notwithstanding such extension.

Offence of assisting to escape and harbouring, etc.

86. Where a person—

(a) knowingly assists or induces, directly or indirectly, an offender placed in or placed out on licence from a Community Residence to escape

from a Community Residence or from any person with whom he is placed out on licence;

(b) knowingly harbours, conceals or prevents a child offender from returning to a Community Residence or to any person with whom he is placed out on licence; or

(c) knowingly assists in harbouring, concealing or preventing a child offender from returning to a Community Residence or to any person with whom he is placed out on licence,

he is liable on summary conviction to a fine of five thousand dollars and to imprisonment for nine months.

Orders and notices.

87. (1) An order or other act of the managers of a Community Residence under this Part shall be signified under the hands of the managers.

(2) Any notice may be served on the manager of a Community Residence by being delivered personally to any one of them or by being sent by post or otherwise, in a letter addressed to them or any of them at the Community Residence, or at the usual or last known place of abode of any of the managers.

(3) No summons issued, notice given, or order made for the purpose of carrying into effect the provisions of this Part shall be invalidated for want of form only.

PART XII

CHILDREN'S ATTORNEY

Children's Attorney.

88. (1) There shall be appointed by the Judicial and Legal Service Commission, an appropriate number of Attorneys-at-law to be called "Children's Attorneys" including one Attorney-at-law who shall be appointed as the Senior Children's Attorney.

(2) The office of Children's Attorney shall be a legal office under Parts I and II of the First Schedule of the Judicial and Legal Service Act. Ch. 6:01.

(3) The Senior Children's Attorney shall be an Attorney-at-law with not less than seven years experience as a family law practitioner.

(4) A Children's Attorney shall be an Attorney-at-law with not less than three years experience as a family law practitioner.

(5) In any Court proceedings, the Court may request that the Solicitor General assign a Children's Attorney to represent and safeguard the interest of a child and perform such other functions as the Court may think necessary.

(6) Notwithstanding the assignment of a Children's Attorney under subsection (5), the Court may, where necessary, adjourn the matter for an application to be made under the Legal Aid and Advice Act.

Ch. 7:07.

Children's Attorney may be engaged on contract.

89. (1) The Permanent Secretary in the Ministry of the Attorney General may, in accordance with the Guidelines on Contract Employment established by the Chief Personnel Officer for such purpose, engage on contract, the services of other persons who possess the qualifications and training specified in section 88(4) as the case may require, for the purpose of performing the functions of a Children's Attorney.

(2) Where a person is engaged on contract under subsection (1), the duration of the contract shall not be less than three years.

Independence of Children's Attorney.

90. Save as otherwise provided in this Act or under any other written law, the Children's Attorney shall not, in the exercise of his functions, be subject to the direction or control of any other person or authority.

PART XIII

EVIDENCE AND PROCEDURES

Special power to take deposition and record evidence, etc.

91. (1) Where a Court is satisfied by the evidence of a medical practitioner or any other person that the attendance of a child before a Court in respect of whom an offence under this Act

or an offence under any written law listed in Schedule 1 is alleged to have been committed, would place the child at risk of harm, the Court may—

(a) take in writing the deposition of the child;

(b) have recorded by audio-digital recording, video-digital recording or computer aided transcription, the evidence of the child; or

(c) have the child appear from a remote location by video conferencing in accordance with the rules made by the Rules Committee of the Supreme Court.

(2) Where the evidence is being taken in writing, the following shall apply:

(a) the evidence of the child shall be taken in the form of a deposition;

(b) the Court shall subscribe the deposition and add thereto—

(i) the date when and place where the deposition was taken; and

(ii) the names of the persons present at the taking of the deposition.

(3) The Court taking any such deposition shall transmit it—

(a) to the proper officer of the Court at which the accused person has been committed and to the Deputy Registrar of a Court with jurisdiction in family matters if the deposition relates to an offence for which an accused person is already committed for trial; or

(b) in any other case, to the Clerk of the Peace of the magisterial district in which the deposition has been taken, and to the Deputy Registrar of a Court with jurisdiction in family matters,

and the Clerk of the Peace and Deputy Registrar of the Court with jurisdiction in family matters to whom any such deposition is transmitted shall preserve, file, and record the deposition and not otherwise disclose its contents except by order of the Court.

(4) If the evidence of the child is recorded by audio-digital recording, video-digital recording or computer aided transcription, or transmitted by video conferencing, a transcript of the evidence may be prepared and verified by the certificate of those responsible for its accuracy in accordance with the Recording of Court Proceedings Act.

Ch. 4:31.

(5) The Court shall subscribe the certificate and add thereto—

(a) the date when and place where the evidence was recorded; and

(b) the names of the persons present.

(6) Where the evidence is recorded, the Court shall cause a copy of the recording and any verified transcript to be kept as a record of the evidence with all the other relevant evidence.

(7) The video-digital recording, electronic audio-digital recording or video conferencing recording shall be the official record.

(8) A deposition, recording, or transcript of evidence of a child in a case involving allegations of a sexual nature shall not be disclosed to anyone except by order of the Court.

(9) For the purposes of this section—

"audio-digital recording" means an audio-recording taken with digital equipment and stored on non-rewritable digital media accompanied by timed annotations identifying the persons speaking; and

"video-digital recording" means a video recording taken with digital equipment and stored on non-rewritable digital media.

Admission of deposition and recorded evidence into evidence.

92. (1) Where, on the trial of a person on indictment for an offence under this Act or an offence under any written law listed in Schedule 1, in respect of a child, the Court is satisfied by the evidence of a medical practitioner or the Director of Public Prosecutions, that the attendance before the Court of any child in respect of whom the offence is alleged to have been committed would involve—

(a) danger to the life or physical, mental or psychological health of the child; or

(b) place the child at risk of harm,

any deposition or recorded evidence of the child shall be admissible in evidence in respect of the accused person without further proof.

(2) The deposition or recorded evidence referred to in subsection (1), shall be admissible in evidence in respect of the accused without further proof if, in the case of—

(a) a deposition, it purports to be signed by the Court, by or before whom it purports to be taken;

(b) recorded evidence, it purports to be verified by the certificate of those responsible for the accuracy of the recording of the proceedings and of the transcript in accordance with the Recording of Court Proceedings Act; or Ch. 4:31.

(c) the recording of a video conference, it is verified by the person responsible for the accuracy of the recording of the proceedings and—

(i) reasonable notice of the intention to take the deposition or to have the evidence recorded has been served upon the person against whom it is proposed to use it as evidence; and

(ii) that person or his Attorney-at-law had, or might have had, if he had so chosen to be present, an opportunity of cross-examining the child making the deposition, including cross-examination by video conferencing.

Admissibility of video recorded evidence of interview between an adult and a child.

93. (1) A video recording of an interview which is conducted between an adult who is not the accused or one of the accused and a child (hereinafter in this Part referred to as "the child witness"), and which relates to any matter in issue in the proceedings, may, with the leave of the Court, be admitted in evidence in so far as it is not excluded under subsection (3).

(2) This section applies to all criminal proceedings in which the offence charged—

(a) involves an assault on, or injury or threat of injury to a person;

(b) is an offence under this Act;

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(c) is an offence under the Sexual Offences Act; or

(d) is inciting the commission of an offence falling under paragraph *(a)*, *(b)* or *(c)*.

(3) Where a video recording is tendered in evidence under this section, the Court may, subject to the exercise of any power to exclude evidence which is otherwise admissible, give leave under subsection (1) unless—

(a) it appears that the child witness will not be available for cross-examination;

(b) any rules of Court requiring disclosure of the circumstances in which the recording was made have not been complied with to the satisfaction of the Court; or

(c) the Court is of the opinion having regard to all the circumstances of the case that, in the interest of justice the recording should not be admitted.

(4) Where leave is granted under subsection (3), the Court may direct that any part of the recording be excluded if it thinks it would not be in the interest of justice to allow its admission.

Cross-examination of child victim.

94. Where a video recording is admitted in evidence under section 93(1), cross-examination of the child witness shall be by means of video conferencing.

Child witness to be called.

95. Where a video recording is admitted under section 93, the child witness shall be called by the party who tendered the recording in evidence but that witness shall not be examined in chief on any matter which, in the opinion of the Court, has been dealt with adequately in his recorded testimony.

Video recorded evidence treated as direct oral testimony.

96. (1) Where a video recording is given in evidence under section 93, any statement made by the child witness which is disclosed by the recording shall be treated as if given by that witness in direct oral testimony, and any such statement shall be

admissible evidence of any fact of which such testimony from him would be admissible, but no such statement shall be capable of corroborating any other evidence given by him.

(2) In estimating the weight to be attached to a statement under subsection (1), regard shall be had to all the circumstances from which any inference can reasonably be drawn.

(3) In this section, "statement" includes any representation of fact, whether made in words or otherwise.

Definition of "child" for the purposes of sections 93 to 96.

97. For the purposes of sections 93 to 96, "child" means a person who was, at the time when the video recording was made, less than sixteen years of age and who had not attained eighteen years of age at the time of the cross-examination.

Unsworn evidence of a child in criminal proceedings.

98. (1) A child under ten years of age shall give unsworn evidence in criminal proceedings.

(2) Before receiving the evidence of a child under subsection (1), a Court shall hold an enquiry to determine whether the child is possessed of sufficient intelligence to justify the reception of his evidence, and understands the duty of speaking the truth.

(3) A child's unsworn evidence may be taken and reduced to writing in accordance with this Act or any other written law and shall be deemed to be a deposition.

(4) The unsworn evidence of a child may not be corroborated solely by the unsworn evidence of another child.

(5) Subject to subsection (6), a person may not be convicted of an offence unless the unsworn evidence admitted under this section and given on behalf of the prosecution is corroborated by some other material particular implicating the accused and such corroboration may consist of evidence other than oral evidence.

(6) Notwithstanding subsection (5), an accused person may be convicted on the uncorroborated unsworn evidence of a child provided that the Court warns the jury of the danger of convicting the accused person on the uncorroborated unsworn evidence of a child.

(7) A child, over ten years of age, whose evidence is received under this section and who wilfully gives false evidence under such circumstances that, if the evidence had been given on oath, he would have been guilty of perjury, commits an offence and is liable on summary conviction to be adjudged such punishment as may have been awarded had he been charged with perjury and the case dealt with summarily under section 99 of the Summary Courts Act.

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Examination of child witnesses through an intermediary.

99. (1) Whenever criminal proceedings are pending before any Court in which a witness is a child and it appears to such Court that the child's ability to follow the proceedings or to communicate should be facilitated through an intermediary, the Court may appoint a competent and qualified person to act as an intermediary.

(2) Unless the Court otherwise directs, the function of the intermediary is to communicate—

(a) to the child witness, questions put to him; and

(b) to any person asking such questions, the answers given by the child witness in reply to them,

and to explain such questions, or answers so far as necessary to enable them to be understood by the child witness or person in question.

(3) A person shall not act as an intermediary in a particular case except after making a declaration, in the form set out in Schedule 2.

Schedule 2.

(4) Where a Court appoints an intermediary under subsection (1), the Court may direct that the child witness shall give his evidence at any place—

(a) which is informally arranged to set the child witness at ease; and

(b) which is so situated that any person whose presence may upset that witness, is outside the sight and hearing of that witness.

(5) Where a Court appoints an intermediary under subsection (1), the Court shall direct that the child witness shall give his evidence at any place which enables the Court and any

person whose presence is necessary at the relevant proceedings to see or hear, either directly or through the medium of any electronic or other devices, the intermediary as well as that witness during his testimony.

(6) Notwithstanding subsection (5), any examination of the witness pursuant to subsection (1), shall take place in the presence of such persons as the Rules of Court or the directions of the Court may provide, but in circumstances in which—

(a) a Court and legal representatives acting in the proceedings are able to see and hear the examination of the witness and to communicate with the intermediary; and

(b) except in the case of a video recorded examination, the jury, if there is one, are able to see and hear the examination of the witness.

(7) Where two or more legal representatives are acting for a party to the proceedings, subsection (6)*(a)* shall be satisfied in relation to those representatives if at all material times it is satisfied in relation to at least one of them.

(8) No examination, cross examination or re-examination of any witness in respect of whom the Court has appointed an intermediary under subsection (1), except examination by the Court, shall take place in any other manner than through that intermediary.

(9) Subsections (4) to (8) do not prevent the prosecution from presenting anew any evidence which was presented through an intermediary referred to in those subsections.

(10) Subsections (4) to (8) apply in respect of all cases where an intermediary referred to in those subsections has been appointed, and in respect of which, at the time of the appointment—

(a) the trial Court; or

(b) the Court considering an appeal or review,

has not determined the case.

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(11) Section 4 of the Perjury Act shall apply in relation to a person acting as an intermediary and where a person acts in any proceeding which is not a judicial proceeding, that proceeding shall be taken to be part of the judicial proceeding in which the witness's evidence is given.

Power to proceed in absence of child.

100. Where, in any proceedings in relation to an offence under this Act or an offence mentioned in Schedule 1, the Court is satisfied that the attendance before it of a child in respect of whom the offence is alleged to have been committed is not essential to the just hearing of the case, the case may be proceeded with and determined in the absence of the child.

Power to clear Court whilst child is giving evidence in certain cases.

101. In addition and without prejudice to any powers which a Court may possess to hear proceedings *in camera*, the Court may, where a person who, in the opinion of the Court is a child, is called as a witness in any proceedings in relation to an offence against, or any conduct contrary to decency or morality, direct that all or any persons not being officers of the Court or parties to the case, their Attorneys-at-law, or persons otherwise directly concerned in the case be excluded from the Court during the taking of the evidence of the child.

Prohibition on children being present in Court during the trial of other persons.

102. No child under sixteen years of age, other than an infant in arms, shall be permitted to be present in Court during the trial of any person charged with an offence or during any proceedings preliminary thereto without the express permission of the Judge, Magistrate or other judicial officer presiding and if so present without that permission, he shall be ordered to be removed, unless he is the person charged with the alleged offence, or during such time as his presence is required as a witness or otherwise for the purposes of justice.

PART XIV

EMPLOYMENT OF YOUNG PERSONS

Interpretation.

103. In this Part—

"Court" means the Industrial Court established under the Industrial Relations Act;

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"employ" and "employment" include employment in any labour exercised by way of trade or for the purposes of gain, whether the gain be to the child or to any other person;

"family" means a person within a familial relationship as defined in section 32;

"industrial undertaking" includes particularly—

(a) mines, quarries and other works for the extraction of minerals from the earth;

(b) industries in which articles are manufactured, altered, cleaned, repaired, ornamented, finished, adapted for sale, broken up or demolished, or in which materials are transformed, including ship building, and the generation, transformation, and transmission of electricity and motive power of any kind;

(c) construction, reconstruction, maintenance, repair, alteration or demolition of any building, railway, tramway, harbour, dock, pier, canal, inland waterway, road, tunnel, bridge, viaduct, sewer, drain, well, telegraphic or telephonic installation, electrical undertaking, gaswork, water-work or other work of construction, as well as the preparation for or laying the foundations of any such work or structure; and

(d) transport of passengers or goods by road or rail or inland waterway, including the handling of goods at docks, quays, wharves, and warehouses but excludes transport by hand.

President may define industrial undertakings.

104. The President may by Order define and declare any particular undertaking to be an industrial undertaking for the purposes of this Part.

Restrictions on employment of a child under the age of sixteen years.

105. Subject to section 106, a child under the age of sixteen years shall not be employed or work in any public or private undertaking, or in any branch thereof, other than an undertaking, owned and controlled by members of the same family; and any person who employs any such child, commits an offence.

Disapplication of section 105.

106. Section 105 shall not apply to work done by—

(a) a child in school for general, vocational or technical education or in other training institutions; or

(b) a child at least fourteen years of age in undertakings, provided that the work is carried out in accordance with conditions prescribed by the Minister with responsibility for education after consultation with the organisations of employers and workers concerned and the work is an integral part of—

(i) a course of education or training for which a school or training institution is primarily responsible;

(ii) a programme of training mainly or entirely in an undertaking which programme has been approved by the Minister with responsibility for education; or

(iii) a programme of guidance or orientation designed to facilitate a choice of an occupation or apprenticeship of any line of training, formal or informal.

Duty of employers to keep register of persons under the age of eighteen years.

107. (1) All employers shall keep and maintain a register of every child employed by them, as well as the name, address, and date of birth of every child.

(2) The register shall on request by an inspector of the Ministry with responsibility for labour be produced for inspection at any reasonable hour of any working day.

(3) An employer who fails to comply with this section is liable on summary conviction to a fine of twenty thousand dollars and to imprisonment for one year.

Inspectors.

108. (1) The Minister to whom responsibility for labour is assigned may designate in writing a suitably qualified public officer as an inspector in his Ministry.

(2) An inspector shall have the authority to require a parent, guardian or person with responsibility for a child or an employer or any other person authorised by an employer, except a person engaged in a confidential and professional relationship with that employer to—

(a) give him information with respect to remuneration paid to, and the terms and conditions of service enjoyed by, a person under the age of eighteen years in the service of that employer; and

(b) permit him to inspect any record, pay sheet or certificate or representation of age relating to a person under the age of eighteen years.

Powers of entry.

109. (1) An inspector may, at a reasonable time and with the permission of the owner or occupier of any premises, enter the premises where a person under the age of eighteen years is employed or where there is any book, record or other document relating to a person under the age of eighteen years which may afford evidence as to the contravention of any provision of this Act and—

(a) if necessary, with the assistance of any person, search the premises for any book, record, certificate or representation of age or other document; and

(b) examine such book, record, certificate or other document.

(2) Where during the course of the examination under subsection (1), it appears to the inspector that there has been a contravention of this Act, he may—

(a) require the parent, guardian, employer, or any other person in the service of that employer to give him all reasonable assistance with, and to answer all questions relating to, the examination; or

(b) seize and take away any book, record or other document, relating to a person under the age of eighteen years and retain them until they are

required to be produced in any proceeding; but where such book, record or other document is necessary for the continued operations of the business, an employer shall be allowed reasonable access to them.

(3) An inspector shall not demand entry to any premises under subsection (1) except on the warrant of the Court.

(4) Where it is shown to the satisfaction of a Judge, on sworn information in writing, that admission to premises has been refused or withheld and that there is reasonable ground for entry into the premises for any purpose stated in subsection (1), the Judge may, subject to subsection (5), by warrant under his hand, authorise entry on the premises.

(5) A Judge shall not issue a warrant under subsection (4) unless he is satisfied either that written notice of the intention to apply for a warrant has been given to the occupier; or that the giving of such notice would defeat the object of the entry.

(6) Where an inspector enters any premises by virtue of this section he may take with him any other person as may be necessary to effect the purpose of his entry.

(7) A warrant issued under this section shall continue in force for such reasonable time as may be necessary to effect the purpose for which it was issued.

(8) A person who obstructs any person doing anything that he is authorised to do under this section or any person who, unless he is unable to do so, fails or refuses to do anything which he is required under this section to do, commits a contempt of the Court, and shall be dealt with as such by that Court as provided under the Industrial Relations Act.

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(9) In this section, "Judge" means the President or Vice-President of the Industrial Court.

Neglectful parent.

110. A parent, guardian or person with responsibility for a child who conduces to the employment of a child under the age of sixteen years through wilful default, or by habitually neglecting to exercise due care, commits an offence and is liable on summary conviction to a fine of five thousand dollars.

Liability of agent or employer.

111. Where the offence of taking a child under sixteen years of age into employment is committed by an agent or workman of the employer, the agent or workman commits an offence as if he were the employer.

False certificate of representation of age.

112. Where a child under sixteen years of age is taken into employment on the production, by or with the privity of the parent, guardian or person with responsibility for a child, of a false or forged certificate, or on the false representation by his parent, guardian or person with responsibility for him, that he is not under sixteen years of age, the parent, guardian or person with responsibility for the child commits an offence.

Presumption of age.

113. Where a person is charged with an offence under this Part and it is alleged that the child in respect of whom the offence was committed was under sixteen years of age at the date of the commission of the alleged offence, the child shall, for the purposes of this Part, be presumed at that date, to have been under sixteen years of age unless the contrary is proved.

Penalty.

114. A person who commits an offence under this Part where no penalty is prescribed, is liable on summary conviction to a fine of twenty-five thousand dollars and to imprisonment for three years.

PART XV

MISCELLANEOUS

Order of Court for counselling.

115. Where a person is convicted of an offence under Parts II to VIII, the Court may, in addition to any other penalties for the offence, make an order for the convicted person to be referred for counselling or any other rehabilitative intervention or treament.

Proceedings to be with the consent of the Director of Public Prosecutions.

116. Proceedings for an offence under Part V, VI or VIII, with respect to which the alleged perpetrator is a child, shall not be instituted except by or with the consent of the Director of Public Prosecutions.

Presumption and determination of age.

117. Where a person is brought before any Court—

(a) charged with an offence; or

(b) for the purpose of giving evidence,

and it appears to the Court that the person is a child, the Court shall make due enquiry as to the age of that person and take such evidence as may be forthcoming at the hearing of the case.

Application of Summary Courts Act.

Ch. 4:20.

118. (1) Except where otherwise expressly provided, all offences under this Act may be prosecuted, and all penalties incurred may be imposed or recovered in the manner provided by the Summary Courts Act or any other written law.

(2) All orders of a Court under this Act shall be made, and all proceedings in relation to any such orders shall be taken in the manner provided by the Summary Courts Act or any other written law.

(3) Any party who is aggrieved by an order or decision of a Court under this Act, may appeal from such order or decision in the manner provided by the Summary Courts Act or any other written law.

Offences committed outside of the Republic of Trinidad and Tobago.

119. A Court in Trinidad and Tobago shall have the jurisdiction to try an offence under this Act where the act constituting the offence has been carried out—

(a) wholly or partly in Trinidad and Tobago;

(b) by a national of Trinidad and Tobago, whether in Trinidad and Tobago or elsewhere if the act would have constituted an offence in Trinidad and Tobago; or

(c) by a person on board a vessel or aircraft registered in Trinidad and Tobago.

Application of Ch. 11:28.

120. The following provisions of the Sexual Offences Act shall apply *mutatis mutandis* for the purposes of an offence under Part VI:

(a) section 30;

(b) sections 31B to 31E;

(c) section 32; and

(d) Part III.

Inconsistency with other laws.

121. Where a person may be charged in respect of the same conduct both with an offence under the provisions of this Act and an offence specified in any other enactment, the provisions of this Act shall apply to the exclusion of any such enactment.

Repeal of Act No. 4 of 1925. Ch. 4. No. 21 1950 Rev. Ed.

122. The Children Act is hereby repealed.

Sections 45(1) and (5); 46(1); 50(14)(h); 91(1); 92(1) and 100.

SCHEDULE 1

OFFENCES UNDER RELATED ACTS

Any offence under—

(a) the Sexual Offences Act;

(b) sections 21 and 48 of the Offences Against the Person Act, and any offence against a child under section 6 of that Act; and

(c) section 4 or 5 of the Summary Offences Act.

Section 99(3).

SCHEDULE 2

OATH/AFFIRMATION TO BE TAKEN WHEN PERSON IS ACTING AS AN INTERMEDIARY

I, AB, do solemnly *swear/affirm by the ..... that I will, to the best of my ability, discharge the duties of intermediary and faithfully and accurately convey such questions and answers as shall be put to the child witness and received from the child witness in the case before the Court.

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*delete whichever is inapplicable.